

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 HAD ON WEDNESDAY, OCTOBER 28, 2015

12 SENTENCING HEARING

13 BEFORE THE HONORABLE SAM A. LINDSAY, JUDGE PRESIDING

14 A P P E A R A N C E S

15 MS. CAMILLE SPARKS
U.S. Attorney's Office
16 Department of Justice
1100 Commerce Street
17 Third Floor
Dallas, TX 75242-1699
18 camille.sparks@usdoj.gov
(214)659-8600

19
20 COUNSEL FOR THE GOVERNMENT

21 MR. JEFFERY C. KING
Law Office of Jeffery C. King
22 3131 McKinney Avenue
Suite 825
23 Dallas, TX 75204
jeff@jeffkinglaw.com
24 (214)416-9100

25 COUNSEL FOR THE DEFENDANT JORDAN PORTER

Charyse C. Crawford, CSR, RPR
1100 Commerce, Room 1544, Dallas, Texas 75242
(214)753-2373 Telephone
Charyse Crawford@txnd.uscourts.gov or charysecrawford@gmail.com

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1 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT,
2 WITH ALL PARTIES AND COUNSEL PRESENT.)

3 THE COURT: This is United States versus Jordan
4 Michael Porter, Case Number 3:14-CR-270-L. What says the
5 government?

6 MS. SPARKS: Camille Sparks for the government.

7 THE COURT: Thank you, Ms. Sparks.

8 MR. KING: Jeffery King for Mr. Porter.

9 THE COURT: Thank you, Mr. Porter.

10 Sir, are you Jordan Michael Porter?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you know why you are here today?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Why is that?

15 THE DEFENDANT: To be sentenced.

16 THE COURT: Are you ready to proceed?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: With respect to this matter the Court
19 has before it the presentence report, the government's
20 statement regarding the presentence report in which it
21 states that it has no objections, the Defendant's
22 objections to the presentence report, the government's
23 response to the Defendant's objections to the presentence
24 report, the addendum to the presentence report, the
25 Defendant's memorandum for nonguidelines sentence, the

1 Defendant's addendum to the sentencing memorandum which
2 includes character letters from family friends.

3 Are there any other written documents that the Court
4 should have received, but has not received concerning
5 this matter?

6 MS. SPARKS: Not from the government.

7 MR. KING: No, Your Honor.

8 THE COURT: All right, Mr. King, have you had
9 sufficient time to read and discuss the presentence
10 report and the addendum to the presentence report with
11 your client, Mr. Porter?

12 MR. KING: Yes, Your Honor.

13 THE COURT: Mr. Porter, have you had sufficient
14 time to read and discuss the presentence report and the
15 addendum the presentence report with your attorney,
16 Mr. King?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right, there is an objection to
19 the presentence report made by the defense, and defense
20 objects to paragraph 24. Specifically, the defense
21 objects to the application of United States Sentencing
22 Guidelines Section 2G2.1. It is the Defendant's
23 contention that paragraph 24 of the presentence report
24 incorrectly states that the Defendant requested JV1 to
25 simply send him lewd and lascivious photos. He points to

1 the factual resume which the government stipulates which
2 there is no corroborated evidence that the Defendant
3 asked JV1 to make a child pornography photos that were
4 sent to him, and he therefore, argues that United States
5 Sentencing Guidelines 2G2.2 is the appropriate sentencing
6 guidelines.

7 Did I summarize your objections correctly, Mr. King.

8 MR. KING: Yes, Your Honor, I have a two -- a
9 couple points to elaborate, but the Court did correctly
10 summarize.

11 THE COURT: All right, just one second. All
12 right, you said you would like to elaborate. Make your
13 point. The Court will have some questions in this
14 regard.

15 MR. KING: The defense's objection is the
16 application of the cross reference portion of 2G2.(c)(1)
17 and that cross reference applies and quoting the section
18 for a minor engaged in sexually explicit conduct for the
19 purpose of production of a visual depiction of such
20 conduct. In other words, the PSR is claiming that
21 Mr. Porter requested these pictures specifically for the
22 purpose of producing them. Now, that section is in there
23 for a reason to punish people for doing that exact thing.
24 In this case there is no evidence even by a preponderance
25 of the evidence -- by the preponderance standard that

1 applies here at sentencing that Mr. Porter requested
2 those images for that purpose. That he even requested
3 the images, there is argument to be made there, but the
4 fact that he may have requested these images specifically
5 for the purpose of production, there is simply no
6 corroborating evidence as agreed to by the government
7 and defense in the factual resume. I understand that we
8 used the words corroborating evidence in the factual
9 resume, but the truth is, Your Honor, there is no
10 evidence to support that Mr. Porter elicited these
11 photographs for the purpose of reproducing them.
12 Obviously, the reason for the objection is that it
13 significantly increases the base offense level.

14 THE COURT: Let me make certain that I understand
15 your objection. Are you saying he did not request the
16 production of the pictures or he did not request them for
17 a particular purpose? Which one are you saying?

18 MR. KING: For the purpose of the objection, I am
19 arguing that Mr. Porter did not request the images for a
20 specific purpose. I would add to that point in the
21 factual resume both the government and the defense agreed
22 that there is no corroborating evidence that Mr. Porter
23 requested those pictures, so --

24 THE COURT: I don't know if I necessarily agree
25 with that based upon what I have seen. Now, if you said

1 he didn't request them, that is one thing. If you said
2 he did not request them for a specific purpose, that is
3 another thing. I don't know the time sequence. I have
4 looked at the correspondence. In fact, that is one thing
5 I wanted to look at the entire correspondence that took
6 place between Mr. Porter and the minor, and I looked at
7 that.

8 Part of the problem is that there are no indication
9 of time as to when the precise exchanges were made. I
10 see the dates, but I don't see anything that shows the
11 exact time with respect to the MeowChat and later on
12 there were e-mails.

13 I think that I really do not have a problem insofar
14 as request is made because I don't think that that when
15 you take all reasonable inference into account that
16 argument can be made with a straight face.

17 The reason I say that -- this is Mr. Porter.

18 "So the pictures did nothing for you?" And there is
19 an emoji or emoticon frowning face. JB said, "yes, it
20 did," and there is a shot, and then she made a statement,
21 quote, It made me so horny, unquote. Your client
22 answers, Yours would if I had any, and there are two
23 laughing emoticons.

24 The minor says, Hmm one second. And then your
25 client says K, which means okay, and JV1 says check your

1 e-mail. Then your client says, Dang, so sexy. And JV1
2 says, You like, with a question mark. Response back by
3 JV1, Can't wait in person to see you. Even if it is not
4 one hundred percent understood and two kisses and
5 emoticons.

6 Given the sex-charged nature of the conversation and
7 what had been going on between these two individuals, and
8 then he can already sent two pictures of her, and then he
9 makes a statement, Yours would, if I had any. Whether
10 you call that suggestion or out right request, I think it
11 is, frankly speaking, given how things are taking place,
12 I think it would be fatuous to say that was not a
13 request. The question is whether he made a request for a
14 particular purpose. As far as saying he did not request
15 the photos, I do not buy that. Given the totality of the
16 circumstances and what was going on, I clearly think a
17 reasonable inference can be made that he did, in fact,
18 request those pictures.

19 You know, a lot of times you don't use the exact
20 words, but you get the context in which something takes
21 place. Then you play on words, well, he didn't request
22 this. He just suggested that. I disagree with that.
23 Sort of like, I have heard lawyers make argument a police
24 officer or state trooper pulls the car over, and the
25 state trooper says ma'am, may I see your driver's

1 license, please. I have had lawyers say that was not an
2 order that is a mere request. That is nonsense. If you
3 don't produce the license right away, you see what
4 happens. All I am saying is given the totality of the
5 circumstances, I think he did request.

6 There was a request. Here is what I do not know,
7 and could have been found out. I do not know whether the
8 pictures were already in production or whether she took
9 them then. She did say after that statement was made,
10 Hmm, one second. I do not know if she took the picture
11 then and sent it to him or they were already there.

12 I think that could have been determined, though, but
13 I don't have that before me, so I don't know. That is
14 part of the problem. I don't know whether that picture
15 was already in existence or whether she made it right
16 then and there after he made the statement. You were
17 going to say something, Mr. King.

18 MR. KING: I understand, Your Honor, where the
19 Court is leaning with respect to my argument that
20 Mr. Porter did not request the images, and I don't want
21 to belabor that point any further, other than to say I
22 think the purpose and the reason why we agree and
23 obviously the government is going to respond to this as
24 we agreed there was no evidence requested in those images
25 in the factual resume is because that -- inference aside,

1 there was no request that Mr. Porter or from Mr. Porter
2 that he produced images that would qualify as lewd and
3 lascivious.

4 I understand where the Court is leaning with the
5 inference there, I don't want to go any further down that
6 road because our objection and what matters here is they
7 were not produced for the purpose of production. With
8 respect to the Court inquiring as to when the images --
9 whether or not they pre-existed or they were taken
10 pursuant to this conversation that happened over text
11 messages, I think my only response to that, and I don't
12 know the answer to that question, but I think the purpose
13 of this cross reference section is if the Defendant is
14 requesting those images be sent to him for the purpose of
15 production.

16 In other words, the type of pornographers request
17 those so they can produce them, use them for their
18 benefit, or to send them to someone else, put them on
19 line. I think that is the purpose for the cross
20 reference section, and that is why we are adamant that
21 does not apply to Mr. Porter.

22 THE COURT: Well, the reason I made the statement
23 it seems to me at times hairs are being split, and I want
24 to make certain what we are focusing on, if you say
25 there is not sufficient evidence that was produced for

1 the purpose of production.

2 MS. SPARKS: May I be heard at some point, Your
3 Honor? I think I may be able to clarify things.

4 THE COURT: I was about to make a comment, but
5 certainly I was going to ask you to speak anyway,
6 Ms. Sparks. Certainly, you may speak.

7 MS. SPARKS: I agree with the Court. I think we
8 are splitting hairs a bit. I don't agree with the legal
9 analysis of what the cross reference is implying.
10 However, was the information what the government was
11 trying to suggest in the factual resume as well as
12 response to the PSR, what we don't have is affirmative
13 evidence, and the Court mentioned this that she produced
14 those because of the request by the Defendant. There was
15 a request by the Defendant, however he wants to couch it.
16 What we don't want and what we can't know is because she
17 deleted her pictures, so we didn't have any way to say
18 when she made those. Because there was no corroborated
19 evidence to suggest when she made those, what we do have
20 is her statement that she made those pictures because he
21 asked for these. But there was no corroboration of that,
22 so that is what we were getting out of the factual. What
23 I was saying in my response to my objections to the PSR
24 because there is no corroboration of that, that we would
25 inure the benefit of that and not seeking the cross

1 reference. I don't see that the cross reference is
2 saying that you have to reproduce these or put them
3 online or anything like that. All that requires is there
4 is a request and somebody produces images of child
5 pornography of that request. That is how I see it.

6 THE COURT: I would agree with the government on
7 that, and I was going to come to that later. I agree
8 with you, Ms. Sparks. I do agree with the government
9 about corroboration, and another question was answered by
10 Ms. Sparks, and I was going to ask if the picture was
11 still in existence, so we can see when they were actually
12 sent. It is my understanding they have been deleted, so
13 the bottom line is, I will -- I will sustain the
14 objection and I will go with the different guideline.
15 Just one second.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: Now, if I sustain the objection,
18 Mr. King, the rule at the applicable guideline the
19 offense to which your client pleaded guilty is found at
20 United States Sentencing Guidelines Section 2G2.2. Does
21 that take care of your other objections as to paragraph
22 25 through 27?

23 MR. KING: It does, Your Honor.

24 THE COURT: All right. In light of the Court's
25 ruling, the Court concludes that its rulings as to which

1 section of the guidelines is applicable necessarily takes
2 into account and takes care of Defendant's objections to
3 paragraph 24 and Defendant's objection to paragraphs 25
4 through 27. All right, I believe there is another
5 objection.

6 There is an objection to paragraph 37. I
7 understand the defense is objecting to the misdemeanor
8 conviction should not be considered in calculation of his
9 criminal history which would make his criminal history a
10 zero. I guess the question then becomes, is it really
11 even relevant because it does not change Mr. Porter's
12 criminal history category. It still remains in one. It
13 does not affect the calculation of the advisory
14 guidelines so. What the Court can ascertain, the
15 objection is really moot; is it not, Mr. King?

16 MR. KING: Thank you, Your Honor, and I would
17 agree that it does not have an impact on the criminal
18 history, and therefore, does not have an impact on the
19 offense level in this case. Just the same it is
20 important that these things are caught and are accurate
21 and law specifically or rather the section specifically
22 states that it should be added one point if the probation
23 included a period of time more than twelve months. We
24 are splitting hairs, but the correct calculation for that
25 should be a zero not a one. Even though it does not

1 impact the criminal history for Mr. Porter, it is
2 important to get this accurate. This is something that
3 will be part of his record and a part of this record and
4 that is why the defense put forth that objection.
5 Referring to Section 4A1.1(c)(1) requires a period of
6 probation more than twelve months for one point to be
7 added.

8 THE COURT: Well, let me take a look at
9 something. Before I go any further, Ms. Sparks, does the
10 government have a position on this objection?

11 MS. SPARKS: My initial response and my response
12 to the objection to the PSR is that it had no impact.
13 This is going to go in his record whether he gets a
14 criminal history point. Beyond that, I would agree with
15 the probation officer's response that he displayed a
16 weapon in this terroristic threat and threatened a
17 victim, and it is not one of the listed convictions noted
18 in 4A1.2(b).

19 MR. KING: We are not objecting to the fact that
20 it is included in the PSR, that just a point was
21 included.

22 THE COURT: Ms. Shifflett, can I see you at the
23 bench a minute.

24 (PAUSE IN PROCEEDINGS.)

25 THE COURT: With respect to that objection, that

1 is the objection to paragraph 37 of the presentence
2 report. The Court determines that that determination by
3 the probation officer was correct, and that was the
4 Court's initial impression, and the Court brought
5 Ms. Shifflett up to confirm a couple of things and what
6 she set out with the Court was consistent with what the
7 Court's thinking was regarding the objection, therefore,
8 the objection is overruled.

9 Any objections as to the advisory guidelines?

10 MR. KING: No, Your Honor, all right, if there
11 are no other objections, the Court will proceed to
12 determine the advisory guidelines. Based upon the
13 Court's rulings, it previously stated on the record, the
14 base offense level is 22. With respect to this case in
15 light of the rulings, the guidelines for a violation of
16 Title 18 United States Code Section 2252A(a)(1) is
17 confined in United States Guidelines Section 2G2.2 and
18 that particular section provides that an offense shipping
19 or receiving child pornography has a base offense level
20 of 22.

21 We next go to specific offense characteristics and
22 the evidence is clear that the Defendant Mr. Porter
23 engaged in a pattern of activity involving the sexual
24 abuse or exploitation of a minor, therefore five levels
25 are added pursuant to United States Sentencing Guidelines

1 2G2.2(b)(5).

2 Also, with respect to specific offense
3 characteristics, the offense involved the use of a
4 computer or an interactive computer service for
5 possession, transmission, receipt, or distribution of
6 materials, two levels are added pursuant to United States
7 Sentencing Guidelines Section 2G2.2(b)(6). That makes
8 the adjusted offense level 29.

9 The next issue is acceptance of responsibility. The
10 Court determines that Mr. Porter has accepted
11 responsibility. The only question is whether he gets a
12 two-level reduction for acceptance of responsibility or a
13 three-level reduction for acceptance of responsibility.

14 Ms. Sparks, at this time does the government move
15 pursuant to United States Sentencing Guidelines Section
16 3E1.1(b) for the additional level for acceptance of
17 responsibility?

18 MS. SPARKS: The government so moves.

19 THE COURT: Thank you, Ms. Sparks.

20 The government has moved for the additional level for
21 acceptance of responsibility. The offense level is 16 or
22 greater. The government's motion is well taken. It is
23 granted and Mr. Porter will be allowed a three-level
24 reduction for acceptance of responsibility. That makes
25 the total offense level 26.

1 Mr. Porter has a criminal history category of I.
2 With a criminal history category of I and a guideline --
3 with a criminal history category of I and total offense
4 level of 26, that gives a guideline range of imprisonment
5 of 63 to 78 months.

6 Are there any comments or objections to the Court's
7 calculation of the advisory guidelines?

8 MR. KING: No, Your Honor.

9 THE COURT: As the Court stated earlier, the
10 guidelines are advisory. In addition to considering the
11 advisory guidelines, a sentencing court must also
12 consider certain statutory factors. The statutory
13 factors are set forth in Title 18 United States Code
14 Section 3553(a)(1) through (7). When the Court imposes a
15 sentence, it must impose a sentence that is sufficient
16 but not greater than necessary to accomplish the
17 objectives or purposes set forth in paragraph (a)(2) of
18 Section 3553. In particular, a sentencing court is
19 required to impose a sentence that reflects the
20 seriousness of the offense, one that promotes respect for
21 the law, one that provides just punishment, one that
22 serves or acts as an adequate deterrent to criminal
23 conduct on the part of the defendant, one that protects
24 the public from further crimes of the defendant, and also
25 a sentence that provides the defendant with the needed or

1 necessary educational or vocational training, medical
2 care, or other correctional treatment in the most
3 effective manner.

4 The Court will take all of these factors into
5 consideration before it imposes sentence against
6 Mr. Porter.

7 Mr. King, would you like to be heard on behalf of
8 your client?

9 MR. KING: Yes, Your Honor, thank you. Your
10 Honor, as we stated in the sentencing memorandum filed
11 with this court, it is the defense's position that Jordan
12 Porter rates a downward variance down to the statutory
13 minimum. In support of that, I would like to bring up
14 several categories first is the family. As the Court is
15 aware in cases like this of this nature, a lot of times
16 the Defendant is subject to a life of loneliness which
17 leads to offenses like this many times. Mr. Porter is
18 fortunate not to have that. He has a family that
19 supports him, that cares for him, and that is waiting for
20 him with open arms once his time in detention is
21 complete. They are actually here today, and I would ask
22 that they stand as I call their name, Jordan Porter's dad
23 Frank Porter, his mom Gloria Porter, his brother Matt
24 Porter, and his wife Kelly, and then also we have Jolene
25 Cornelius who wanted to be here today. She is a friend

1 of the family. Another friend is Mark Dickinson. These
2 are people who have been at Mr. Porter's side this entire
3 time.

4 If the Court recalls at the last sentencing hearing
5 we heard from another lady Joan Boisen who traveled from
6 Iowa just to be here. This is significant because Jordan
7 Porter has this network waiting for him upon his release
8 that will going to help him reintegrate back into
9 society.

10 As the Court noted Jordan Porter accepted
11 responsibility for this. In fact, he did so very, very
12 quickly. This is obviously -- not that any offense is
13 easy to plead guilty to, but this type of offense as the
14 Court is aware is very difficult to admit guilt to, to
15 walk into open court and say you did these things.
16 Mr. Porter stands here a remorseful person. He is
17 shamed, embarrassed, but because of responsibility he has
18 elected to move on with his life. In so doing, he has
19 made it so that the young girl involved in the case does
20 not have to walk into the courtroom and testify about
21 these things. Her family is not required to be here to
22 testify. He has insulated her in accepting
23 responsibility.

24 Your Honor, I think the Court has read through the
25 evidence associated with this case with respect to the

1 text messages and the chats and things of that nature. I
2 think the one thing that would kind of separate
3 Mr. Porter from others that are labeled as an online
4 predator is that Mr. Porter did not get online seeking
5 out a young person. There is no evidence of that. In
6 fact, the Court has received a letter to the fact that
7 there was this age difference right at the beginning.
8 None of this is a defense. None of this is excused, and
9 Mr. Porter realizes that.

10 THE COURT: What age did he list himself as
11 initially?

12 MR. KING: I believe it was 26, Your Honor.

13 THE COURT: There is nothing indicated that he
14 listed his age as 18 or 19 or something like that?

15 MR. KING: No, Your Honor.

16 THE COURT: If I look through these records, I am
17 not going to find that that is the case?

18 MR. KING: I mean, if the Court has that
19 evidence, the defense is not aware of it.

20 THE COURT: Well, he would know. He would know
21 more than anybody. I am coming after the fact. He would
22 know whether he did that or not.

23 MR. KING: No, Your Honor.

24 MS. SPARKS: Would you like me to speak on that,
25 Your Honor?

1 THE COURT: Well, let's go ahead and take it
2 while it is live. Let's hear from you.

3 MS. SPARKS: From his own written statement, I
4 believe he indicated that he was 18 years old initially.

5 THE COURT: I thought I had read that somewhere.
6 Ms. Shifflett, is that correct?

7 THE PROBATION OFFICER: That is correct. I have
8 profile page where he listed his age at 18 on MeowChat.

9 THE COURT: I thought I read that.

10 MR. KING: Yes, Your Honor. If that is the case,
11 Your Honor, that is my mistake. Just the same, I think
12 the point here is that --

13 THE COURT: He didn't make any effort to correct
14 you while he was standing there. You said it was your
15 mistake. He didn't make any effort to say no, Mr. King,
16 I did say that at one time. I never saw him try to
17 correct you and say yes, I did.

18 MR. KING: That is my fault for not preparing him
19 today, Your Honor. It has been a long time since we did
20 review this. This is really prior -- we reviewed it
21 prior to the sentence hearing. Really it has been months
22 since the plea. That is my fault in springing that on
23 him. It is not Mr. Porter's fault.

24 THE COURT: When you say springing on, my
25 statement was -- when I review a file or review the

1 evidence before me, I review everything because I know
2 the government is going to be making an argument. I know
3 the defendants is going to be making argument, so I have
4 to acquaint myself with the facts. In preparation for a
5 hearing, I acquaint myself with the facts, read the
6 statements or the filings filed by the various parties,
7 so I can anticipate the argument they will be making at
8 the hearing. Along with that to put the argument in
9 context, you have to understand the factual background.
10 That is why I was bringing that up.

11 As stated earlier, it wasn't a situation where I want
12 to spring that on him. As stated earlier, he would know
13 whether or not he listed his age as 18. As stated
14 before, I am coming after the fact.

15 MR. KING: And I appreciate that, Your Honor.
16 Again, I would just reiterate in preparing this for
17 today, I was the one that essentially impressed out upon
18 him and that was my mistake. I would ask the Court not
19 to hold that against Mr. Porter.

20 THE COURT: All right.

21 MR. KING: Again, I think the point here, Your
22 Honor, I bring these points up not in a defense to his
23 actions, but merely to separate him and set him apart
24 from those that get online with the specific intent of
25 reaching out to young girls. I think an important piece

1 here along with the text messages and chats, the
2 government did seize computers and other devices and
3 there was no evidence at least revealed to us that
4 anything existed on those devices that would suggest that
5 Mr. Porter viewed child pornography or had these kind of
6 chats or conversations before. That supports the
7 argument that this is not a pattern necessarily for him.

8 This is not something that he does. This is not how
9 he spends his time. This wasn't a moment of weakness.
10 It is certainly an error in judgment, but it is not
11 something that defines who he is. The other
12 psychological assessment conducted and who went to
13 Seagoville and interviewed Mr. Porter and had him take
14 various tests. He indicated a low to moderate risk for
15 recidivism based on several factors. Importantly,
16 Dr. Brandon noted in his report, and this is somebody who
17 does this for a living and does these kind of forensic
18 interviews for a living, that in reviewing the evidence
19 for this case, between Mr. Porter and JV1 that the nature
20 of the conversations were -- did not begin necessarily
21 immediately asking about pictures or of a sexual nature.
22 Really it started a lot of the conversations in the form
23 of trying to form a relationship, and I know how that
24 sounds, but I think insofar as --

25 THE COURT: Looks like it happened awfully quick

1 after they started talking.

2 MR. KING: My point is that wasn't all that
3 existed in the conversations. There were other things.
4 They talked about things of a personal nature about
5 family, about their background. So it wasn't -- with the
6 sole purpose of he went online for more pictures and
7 let's talk about sex and things like that. You do see in
8 these types of cases where people get online, and that is
9 there objective. That is their purpose.

10 Mr. Porter comes from a very supportive family.
11 His parents adopted him as an infant. He does have some
12 medical conditions that are concerned that Dr. Brandon
13 noted this for his age somebody who is mentally very,
14 very immature. It explains why he graduated second to
15 last in his class in high school. It explains why he is
16 unable to necessarily relate very well with people his
17 own age, that he doesn't have that kind of confidence
18 that you would find in a person of his age, that a lot of
19 that has to do, perhaps, with his epileptic condition and
20 the embarrassment integrated into society that goes with
21 that.

22 He knows there is a possibility in there that may
23 contribute to Mr. Porter's immaturity as far as his age
24 goes. Your Honor, just to sum up, Mr. Porter understands
25 what he did here today. He has been cooperative. He has

1 a family that supports him, that loves him. He came in
2 here very quickly in front of the magistrate and pled
3 guilty to this offense and accepted responsibility. He
4 knows what comes with this. He knows that he is going to
5 be leaving here wearing these same orange jumpsuit that
6 he is wearing right now. He understands that he is going
7 to have to register as a sex offender and he welcomes
8 that as a method or a way to move on and to get beyond
9 this and get help and get better so he can reintegrate
10 with society.

11 For those reasons and factors under 3553(a) the
12 defense believes that a statutory minimum in this case is
13 sufficient but not greater than necessary to achieve the
14 objectives set forth in the Sentencing Guidelines.

15 THE COURT: The statutory minimum sentence is
16 what?

17 MR. KING: It is five years, Your Honor.

18 THE COURT: Okay, did -- I thought I saw
19 something earlier. All right, just one minute.

20 (PAUSE IN PROCEEDINGS.)

21 THE COURT: Okay, I understood the statutory
22 minimum to be five years or 60 months. What puzzled me
23 is why did you ask for 14 months.

24 MR. KING: I actually filed a memorandum without
25 regard to the statutory minimum. The argument still

1 stands. Honestly, I've done a case like this before and
2 I used some of those same arguments, but I did file that
3 without regard initially, thus the addendum, so the Court
4 understood that I was well aware of the statutory
5 minimum. The 14 months reflects a little bit more now
6 than the amount of time that Mr. Porter has served.

7 THE COURT: Tell me this, Mr. King. Tell me how
8 a sentence of the statutory minimum would accomplish
9 those objectives set out in paragraph (a)(2) of Section
10 3553 Title 18.

11 MR. KING: Five years is still five years, Your
12 Honor.

13 THE COURT: That's true.

14 MR. KING: That is a significant amount of time
15 for a person to be away from society to be away from
16 family, not be able to get a job and live a normal life.
17 With regard to punishment, that is certainly an
18 appropriate punishment for an offense of this nature for
19 the facts of this nature with regard to how society views
20 this type of offense, I think it is fair to say, it is
21 well documented that these types of offenses will not be
22 tolerated.

23 As far as sending that message to society, I think
24 that is done. As far as sending that message to
25 Mr. Porter, that message has been made clear as well. He

1 is going to be going back to prison as well. He pled
2 guilty to this offense. He is going to be a registered
3 sex offender. Those are the factors. Even with regard
4 to the statutory, we are asking for three months lower
5 than the guidelines range. Those factors certainly apply
6 and he should be sentenced to the statutory minimum of 60
7 months in this case.

8 THE COURT: You know, I do not always agree with
9 the guidelines as a matter of policy. Frankly speaking,
10 at times the guidelines don't always make sense in
11 certain context. One argument I hear defense attorneys
12 making from time to time is that you can have a situation
13 whereby there is no sexual contact at all with a minor or
14 a prepubescent minor and a person can end up with a much
15 higher guidelines sentence. In other words, I won't say
16 all, I don't want to minimize, but what the person has is
17 certain images in his possession. They may have 6000,
18 7000, or whatever in their possession, but yet there is
19 never any contact with the minor, and then sometimes the
20 guideline range goes up to can be as high as 360 months,
21 maybe even life depending on the criminal history of the
22 person. A lot of that is driven by the add-ons in a case
23 merely by receiving pornography.

24 The argument I hear by defense attorneys and, frankly
25 speaking, it makes sense. They will say, Your Honor,

1 there was no sexual contact; there was no rape; there was
2 no fondling; there was no penetration of the vagina and
3 so forth, and the guidelines are calling for a sentence
4 the same as a rapist would get or where there was sexual
5 contact.

6 I guess here I almost see the reverse going on.
7 There are a few images, but you have contact. You may
8 say, Judge, well, five points were added for quote,
9 unquote, sexual contact. There in lies the problem I
10 have with the guidelines. Does the guidelines define
11 sexual contact? Is there a definition?

12 MR. KING: Well, I know there is, Your Honor,
13 because we obviously looked into objecting to that five
14 points, and there is a reason why we didn't. I am
15 familiar with the case law and policy arguments that the
16 Court was eliciting regarding the all of the sentences
17 that come along with possession of pornography images.
18 There is a reason we did not make that argument because
19 obviously in this case there is contact. As admittedly
20 from the get-go from Mr. Porter, he admitted that to law
21 enforcement and he did not object to that relevant
22 conduct in the PSR.

23 As the Court already stated, five points is a
24 significant increase if that comes along with the receipt
25 of child pornography.

1 THE COURT: I guess that is my point. You talk
2 about sexual contact. As I was saying, that is why I
3 have an issue with the guidelines insofar as the
4 guidelines are concerned. The latest version of the
5 guidelines describes prohibited sexual contact as meaning
6 any sexual activity for which a person can be charged
7 with a criminal offense and also includes production of
8 child pornography and does not include trafficking or
9 possession of child pornography.

10 The guideline definition as far as I am concerned is
11 way too broad and that is a problem I have. Sexual
12 contact, that can mean -- that can be really describe
13 anything from touching or fondling all the way to sexual
14 intercourse. In my humble estimation, those are not the
15 same thing. It is one thing to touch or fondle someone
16 in the vaginal area or the breasts. It is another thing
17 to kiss someone in the same areas. It is another thing
18 to have sexual intercourse with a minor. In other words,
19 sexual intercourse is much more serious than fondling.
20 The guidelines do not take that into account. Let me
21 give you an example and maybe this will drive my point
22 home.

23 You know, there is a federal statute, and I can't
24 cite it right offhand, I believe is it Title 18 Section
25 924 deals with felon in possession of a firearm, and if

1 that person uses that firearm in relation to a drug
2 trafficking offense or a crime of violence, then the law
3 provides that there is a mandatory sentence that is
4 attached onto the underlying offense. Here is what is
5 interesting about that statute. If the person possesses
6 in relation to a drug trafficking offense or crime of
7 violence, then the law says that you have to at least
8 tack on five years. That is for possession. If the
9 person brandishes the firearm, the minimum sentence to be
10 attached on is seven years. If the firearm is
11 discharged, it is ten years.

12 Do you see the point I am making? I guess what I'm
13 saying is sexual contact as set out in the guidelines
14 does not tell the whole story. Under that definition for
15 the mere -- I don't mean -- I hate to use the word mere
16 because it seems like I am minimizing the person who is
17 an adult having sexual contact with a minor, but I am
18 not. But I am using that term to show the contrast. For
19 touching or fondling a minor, those five points apply.
20 At the same time, those five points apply for actual
21 sexual intercourse, something is wrong that picture under
22 the guidelines. So what I am saying, I don't think the
23 guidelines necessarily take into account what the Court
24 needs to consider with respect to the statutory factors,
25 and I would like to hear your comment on that because

1 that is weighing heavily on the Court.

2 MR. KING: I understand your point, Your Honor.
3 I think my response to that would be that same scale for
4 lack of a better term, I am sure there is a better one,
5 could apply to the nature of the sexual meeting, the
6 actual sex in that some cases you see where someone in
7 Mr. Porter's position uses a lot of persuasion and a lot
8 of deception to try to lure someone back to their house
9 or into their car, as you say to catch a predator to
10 present false image of yourself so you can gain entry
11 into their home. It doesn't take those factors into
12 account either because when we talk about someone under
13 the age of consent, that's that. So I think just as it
14 fails to make the consideration, the Court pointed out it
15 also fails to take into account which is why we brought
16 up the sentencing memorandum the nature and means by
17 which Mr. Porter committed this offense.

18 Again, I don't couch this in terms of being any kind
19 of offense or excuse, but he was -- it was -- he was open
20 about it. He didn't use any kind of force. He didn't
21 try to lure her. He didn't try to convince her in any
22 way. Not that that is an excuse, but I think under the
23 same guise of they distinguish between sexual contact and
24 sexual intercourse, I think that same argument could be
25 applied to the manner in which that sex presented itself

1 or happened.

2 THE COURT: Okay, let's talk about that since you
3 brought that up. If my poor memory serves me correctly,
4 I think when they first started talking, this young lady
5 said she was kind of down in the dumps because her
6 boyfriend dumped her; isn't that correct?

7 MR. KING: Yes, sir.

8 THE COURT: Well, when somebody is like that,
9 only 15 years old, an older man is expressing interest in
10 her, she is vulnerable. When you say he didn't use
11 certain means, you had a person who was vulnerable, who
12 was upset, maybe mildly depressed, anyway down in the
13 dumps because her boyfriend had quote, unquote, dumped
14 her. If I understand the conversation correctly, he
15 essentially dumped her because the new girlfriend had
16 more physical attributes. That is saying it
17 euphemistically. So what I am saying, she is at a
18 vulnerable stage. To be honest, when somebody is
19 vulnerable it doesn't take a lot in many situations.
20 I will also say this. The young lady being recently
21 dumped, here is an older guy showing interest in her.
22 You are going to tell me that has no effect?

23 MR. KING: No, Your Honor, when you look at the
24 text messages and correspondence between these two, there
25 is no excuse. There is no correct answer to that. There

1 is no defense to that. Mr. Porter understands that as
2 well.

3 I think by the Court's standards and society's
4 standards, there is no excuse for the dialogue that
5 happened. The point I was trying to make to use the
6 Court's examples to compare this to other cases where we
7 see this kind of thing. The Court has heard various
8 arguments from lawyers in my position saying to a
9 Defendant trying to better their sentence. When you
10 compare them to cases like this as I am sure the Court
11 has seen -- I know I have seen cases where the Defendant
12 outright lures someone in or tries to convince them, hey,
13 it is okay, let's do this, trust me, no one will find
14 out. This will make you feel better. I am using
15 examples. There are ways by which someone can actually
16 convince one or lure them, maybe change one who didn't
17 want to do this now they do want to do this. That is the
18 distinction that sets this case apart from other cases.
19 The other point being, there is no evidence that this has
20 ever happened before.

21 The government had all of the devices all the
22 computers and the cell phones. This was -- this was a
23 one time event, and I think that also sets us apart that
24 this is not who Jordan Porter is. You can't defend the
25 statements there or the dialogue. I would agree with the

1 Court there. There is no excuse anyone could give that
2 would satisfy the Court or society.

3 THE COURT: Okay, there is evidence to indicate
4 that, but for the intervention of the young lady's
5 stepfather, this would have gone on indefinitely.

6 MR. KING: There is evidence of that, yes, Your
7 Honor.

8 THE COURT: There is no question. He saw a
9 picture of her kissing an individual that appeared to be
10 older, and that is what kicked off the investigation.
11 Also, the pre-sentence report indicates and so does all
12 of this background information that I have here that the
13 reason it stopped was because a detective from the
14 Garland Police Department assumed the identity of the
15 juvenile or the minor, and Mr. Porter thought he was
16 communicating with the minor when, in fact, he was
17 communicating with a detective.

18 In fact, when he went out there and he was arrested,
19 he thought he was going to meet the minor. As I stated
20 before, what stopped it was intervention. So I don't
21 know how long it would have gone on. We cannot say that.
22 We definitely know it would have continued to some point
23 because they had made, the two of them had made
24 statements or discussed meeting in the future beyond the
25 date that he was caught.

1 MR. KING: I would agree, Your Honor, there is no
2 indication as exactly how long this would have gone on.
3 Obviously, the evidence did go on for a period of less
4 than a month, but I understand the Court's point, and we
5 are not arguing that intervention didn't have something
6 to do. Obviously, it did.

7 Again, our argument is not that he noticed what he
8 did was wrong right away and stopped. It is not that
9 what he was saying to her was okay or in a gray area that
10 may be acceptable. I am not going to insult the Court's
11 intelligence by making those arguments, but simply that
12 Mr. Porter did not use deception or try to lure someone
13 in that otherwise would not have consented to something
14 like this.

15 It is difficult to make that argument because when
16 you are under the age of consent, then that is that.
17 There is no -- you lose the right to make certain
18 arguments and I understand that. I am just comparing
19 Mr. Porter's case to other cases of this nature where you
20 do have someone who is literally a predator.

21 THE COURT: I guess a lot of what takes away is
22 someone who is a minor we protect the minors at the
23 federal level and state level because minors are
24 incapable of making rational decisions. They have not
25 reached -- they need the oversight of parents, guardians,

1 and society as a whole to protect them, and one reason we
2 protect minors is they are quite impressionable, so you
3 don't have to use a lot of sweet talk or fancy talk or
4 certain words when you are dealing with a minor because,
5 frankly speaking, they have not fully developed mentally.
6 That is why we protect them because they are incapable of
7 making rational decisions in all situations.

8 Anything else, Mr. King?

9 MR. KING: No, Your Honor. There are some family
10 members that would like to address the Court if now is
11 the appropriate time we can do that now.

12 THE COURT: Certainly, we can do that now, and I
13 will hear from Mr. Porter later.

14 MR. KING: The defense calls Frank Porter.

15 THE COURT: Sir, what would you like to tell the
16 Court? State your name.

17 MR. FRANK PORTER: Frank Porter.

18 THE COURT: All right, Mr. Porter, what would you
19 like to tell the Court?

20 MR. FRANK PORTER: Well, I could go on about the
21 good things that Jordan has done in his life. He has a
22 big heart. He has even helped out some of inmates where
23 he has been at because they have come up short with funds
24 and things like that. We need to remember in my opinion
25 when we are sentencing Jordan that you are sentencing the

1 whole family and friends and Jordan has expressed to me
2 that he has -- he knows that he was in the wrong and that
3 he has shown remorse. He is truly sorry. It is not
4 something that he is going to forget right away.

5 In my mind an extended sentence would only harden --
6 harden him. He truly does not belong in the criminal
7 justice system. That is just my opinion. He is not a
8 perfect person, but who is? Thank you.

9 THE COURT: Thank you, Mr. Porter.

10 MR. KING: The defense calls Mr. Porter's
11 brother, Matt Porter.

12 THE COURT: All right, Mr. Matt Porter, what
13 would you like to tell the Court?

14 MR. MATT PORTER: I wanted to start out saying
15 that you know Jordan doesn't come from a broken home. In
16 today's society, it is very common for somebody to have
17 two or three different mothers or fathers in their life.
18 I think it is important to note that. You know, his
19 older brother, my older brother is a retired marine. My
20 older brother and I have never been arrested. We have
21 never been in the system. He comes from a good family,
22 good home. I think all of those things should be duly
23 noted.

24 We are closing in on two years since I have been
25 going to church religiously weekly. I don't usually use

1 the word born again, but, you know, the church that I go
2 to is life-giving, spirit-filled, Jesus focused, never
3 talk about negativity or sin, talk more about being more
4 like Jesus. Jordan attended six or eight times between
5 the time I started going and this incident happened. In
6 talking with Jordan, he has been in now 16 months, and I
7 think in the last 16 months, we have talked a handful of
8 times that he would like to get out. He wants to be
9 attending church. He wants to work at the church. He
10 wants to help people in the situation that he is in. He
11 wants to go back to school and be educated. He wants to
12 get out and be part of society and be a productive part
13 of society.

14 I think the impact that this church has had on me in
15 the years and little bit that he went is speaking volumes
16 to who he is and where he wants to go. I think difficult
17 thing for me is to stand here and maybe if you were in my
18 shoes, gosh, I can't believe this is happening. How can
19 something in the grand scheme of things in someone's eyes
20 go fairly minor, but this is going to pass on someone's
21 soul, so significant, so I just hope you take into
22 account, you know, I have never been arrested and my
23 retired brother marine corps, no broken home, solid
24 family and friends, and I think where Jordan wants to go
25 in life. Needless to say, I am very nervous, but that is

1 all I have to say.

2 THE COURT: All right, thank you, sir.

3 MR. KING: Your Honor, finally, the defense would
4 call Jolene Cornelius.

5 MS. JOLENE CORNELIUS: Good morning.

6 THE COURT: Good morning, Ms. Cornelius.

7 MS. JOLENE CORNELIUS: I have lived across the
8 street from the Porters since they moved in in 2001.
9 Jordan was 16 at the time, I believe. He was a tall
10 young man that was always helpful and cordial. There
11 were many times I would call and ask him to do chores
12 around the house. Many times he came over and visited
13 with me and my husband and would stay and have dinner
14 with us. Of course, sometimes he didn't like the food we
15 were having, but he would stay. We always considered him
16 like a second son to us. I think Jordan is a good
17 person. I think he can come out of this and be a good
18 person and be helpful to society, and I hope you will
19 take that into consideration because he has never been a
20 mean-spirited boy. He has always been a young man that I
21 could always rely on and ask him for help any time I
22 needed it, and I thank you for listening to me.

23 THE COURT: Thank you, Ms. Cornelius. All
24 right, Mr. Porter, you have the right to address me
25 personally at this time and present any information that

1 you would like in mitigation of your sentence. In other
2 words, if there is something would you like to tell me
3 about this matter before I impose sentence, now is the
4 time for you to do so.

5 THE DEFENDANT: Right now, I would like to
6 apologize to my family on all the things that have
7 happened here. I would also like to apologize to the
8 victim's family and all the hardships I have caused over
9 the past year here. I have been going to church in
10 Seagoville, and I have been involved in Bible study, so I
11 am learning more and trying to better myself to learn
12 more about the Bible and learn more about how to move
13 forward with my life and how to better my life.

14 MR. KING: Jordan, are you little nervous to
15 talk?

16 THE DEFENDANT: A little bit.

17 MR. KING: I want to ask you a few more
18 questions. You heard me make a lot of arguments today
19 about the facts of your case. To be clear, do you make
20 any excuses for your judgment in initiating conversation
21 with this young lady, make any excuses at all? You admit
22 it?

23 THE DEFENDANT: I admit what I have done is
24 wrong, and I do take responsibility for all my actions
25 that I have done.

1 MR. KING: Now, you mentioned that you were
2 getting involved in some religious activities at
3 Seagoville.

4 THE DEFENDANT: Yes.

5 MR. KING: Tell us a little bit about that.

6 THE DEFENDANT: We had a Bible study that all
7 the inmates have now formed. We meet every night at 6:00
8 and everybody kind of gets to get up and speak about
9 anything that is going on in their life if they have any
10 problems and stuff like that. We have two pastors that
11 come in on Sunday and Monday that speak for about an hour
12 for us. I take notes and also I have asked many
13 questions to both of them about things that I can do to
14 help Seagoville grow and what good I can do there.

15 MR. KING: When you are actually released from
16 jail, what is it that you would like to do with your
17 life?

18 THE DEFENDANT: One, I would like to go back to
19 school for probably business, but I would also like to go
20 back to school to help the church in any way if I can as
21 possible, to help people that have been in my situation
22 before, help them understand, you know what it is -- what
23 we have done is wrong and how to move forward with our
24 lives.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: All right, anything else from the
2 defense, Mr. King?

3 MR. KING: No, Your Honor, just I think Jordan's
4 family said it best. Matt said he does not come from a
5 broken home. He comes from a loving and caring family.
6 He doesn't have that as an excuse for doing what he did.
7 What it does is it demonstrates he has people here to
8 help him reintegrate into society when that time comes
9 and to lift him up and support him. That in and of
10 itself demonstrates he is not going to do this kind of
11 thing again. Mr. Porter has a new found faith that he is
12 taking advantage of and that is something that he is
13 going to carry with him throughout his time in
14 confinement and when he is released. He has been
15 cooperative the entire time. It has been a pleasure to
16 get to know him, and for those reasons included in the
17 memorandum, the defense's position that a downward
18 variance is appropriate to a time of 60 months. Thank
19 you.

20 THE COURT: All right, just one minute before I
21 hear from the government.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: I don't have any additional
24 questions or inquiry of the defense at this time. I may
25 have some later on.

1 Ms. Sparks, would the government like to be heard?

2 MS. SPARKS: Yes, Your Honor. Your Honor, this
3 is one of those cases well, all my cases are like this
4 where I have to make a decision on where this case will
5 be presented to the Court. In other words, if there is
6 going to be a plea, what plea am I going to offer. In
7 this case, as the Court is well aware, this Defendant was
8 initially charged with enticement of a minor which fits
9 the facts. There are facts to support that. When I sat
10 down with the victim and victim's family a year or so ago
11 and told them and asked them what was their position on
12 things, and they really wanted this case over more than
13 anything else, and their primary desire was the victim
14 would not have to testify.

15 We talked about different possibilities. One of the
16 things I asked them was I said well, would you like me to
17 make this offer receipt of child pornography, and they
18 actually were very happy with that offer. So in my mind,
19 if it were just me making this decision as to what to
20 charge him with I would say let's go forward on this
21 enticement charge. It fits the facts. We have someone
22 who engaged in sexual intercourse with a minor several
23 times. As the Court pointed out, it would have gone on
24 had law enforcement not intervened. We have a situation
25 where we have pretty egregious conduct for at least a

1 month or so going on.

2 We have some chats going on back and forth between
3 someone who is in their late twenties with someone who is
4 15 years old. I think in the victim's mind this was a
5 relationship. I think that is the way she saw it, and
6 sometimes that happens in these cases. So she did
7 present a letter that we indicated to the Court that she
8 did not want to pursue going forward even to talk at
9 sentencing. That gives you a bit of an idea of where she
10 is with on all of this.

11 At the end of the day, Your Honor, I think this is
12 pretty egregious conduct. We have actual contact. We
13 have somebody who is charged at the state for sexual
14 assault of a child. As the Court has pointed out several
15 times, we have a situation where perhaps the parties
16 aren't coming with equal position. She is a child and,
17 she also had just broken up with her boyfriend.
18 Mr. Porter presented himself as 18, somebody who she
19 would probably want to talk to, and he didn't disclose
20 his age, but, you know, she maintained the relationship
21 with him at that time.

22 So at the end of the day, Your Honor, somewhere from
23 mid to high end of the guidelines is appropriate in this
24 case. Had we gone forward with a regular charge or the
25 indicted charge, his minimum would have been ten years, I

1 think that is certainly fair and reasonable. It is
2 within the guideline range, and I think that under the
3 facts and circumstances of the case that that would be
4 sufficient, not greater than necessary to meet the
5 factors of 3553.

6 THE COURT: Thank you, Ms. Sparks.

7 Ms. Culpepper, let me see you at the bench.
8 Ms. Shifflett, let me also see you at the bench.

9 (PAUSE IN PROCEEDINGS.)

10 THE COURT: All right, you can have a seat
11 momentarily.

12 (PAUSE IN PROCEEDINGS.)

13 THE COURT: All right, you may return to the
14 lectern, Mr. King and Mr. Porter. There is one thing I
15 want to address. I don't know that the Court can accept
16 the argument that this matter did not start out with the
17 intent to have sex. When you look at the totality of the
18 text messages and e-mails on what happened on the 7th of
19 June of 2014 and what happened on the next day, I am
20 having trouble embracing the argument that Mr. Porter did
21 not begin this communication with the intent of having
22 sex with this minor. I want to hear that explained.

23 MR. KING: Your Honor --

24 THE COURT: To be honest with you, let me just
25 say this. Everybody is grown. Everybody is an adult in

1 this courtroom. I guess the only time that you would out
2 of the door say something of an explicit sexual nature is
3 it were a brothel or house of prostitution or something
4 of that sort or a swingers' club.

5 Usually when you meet someone on line, the first
6 thing out of your mouth is not of a sexual nature. You
7 sort of ease your way into it, build your way up to it.
8 To be honest, on the day they met, there are innuendos
9 and things of a sexual nature. What I am saying is it
10 doesn't take a rocket scientist to look down through the
11 muddy waters and spot the fish. There is little word
12 thrown out here, word thrown out there. As you read
13 along, the words are more explicit. Like on the second
14 day after -- day after they met, 4:30 in the morning,
15 Mr. Porter is talking about how he had to change his
16 sheets, change his shorts. Now, come on. Everybody
17 knows what he is talking about there. This is 4:30 in
18 the morning. They only started talking on the 7th.

19 I will admit, you are not going to see the words sex
20 on the first few exchanges. You don't see that. There
21 is conversation that leads up to that. I cannot except
22 the premises that he was not heading towards a sexual
23 relationship with this person. I am willing to listen to
24 anything you have to counter that.

25 MR. KING: Thank you, Your Honor. I will

1 address that in two points. The first is that there is
2 no evidence that exists that he had ever done this before
3 and again, I stress the government was in possession of
4 all the text --

5 THE COURT: Let me assume that is correct. Let
6 me assume that that is correct, but when I read what went
7 on and I am going to have this as a Court Exhibit because
8 I don't know what is going to happen here. I think this
9 needs to be a Court Exhibit. It is -- I believe it is
10 the case agent's summary and attachment of e-mails of
11 MeowChats and text messages and so forth. I will order
12 it to be filed under seal, so it is not accessible to the
13 public, but I think it ought to be Court Exhibit No. 1.
14 I want to know if there is any objection from the
15 government.

16 MS. SPARKS: No, Your Honor.

17 THE COURT: Any objection from the defense?

18 MR. KING: No, Judge.

19 THE COURT: I will have Ms. Crawford mark this
20 as Court Exhibit No. 1. It is to be placed under seal
21 and not to be disclosed to the public unless I or the
22 Fifth Circuit order otherwise. Go ahead.

23 MR. KING: At the outset, clearly there was sex
24 and Mr. Porter admitted to that when he was caught. To a
25 certain extent, I argued this already on my heels and I

1 realize that happened. There is no way we can defend
2 against that. I think leaving aside the argument that
3 there was no evidence that the -- the evidence suggests
4 this was the one and only time this happened.

5 The conversation begins even if there are sexual
6 overtones, that is a lot of times why people are online
7 or use these apps is to do mature things like that.

8 As the assessment indicated, Mr. Porter is already
9 not mature-wise, not at his age level, that he is
10 younger. It was a dumb thing to do, but the first
11 overtly sexual thing of sexual nature was the e-mail from
12 JV1 to Mr. Porter describing a very detailed sexual
13 encounter. That was the first real indication of
14 anything of an overtly sexual nature.

15 She was the one who initiated that. Again, not as a
16 defense to Mr. Porter's actions, but in response he did
17 not have the intention to actually have sex with her. I
18 don't think the evidence can say that by preponderance.
19 A lot of people get online to have these conversations to
20 do things.

21 THE COURT: You make reasonable inferences. Just
22 one minute.

23 (PAUSE IN PROCEEDINGS.)

24 THE COURT: You mentioned that e-mail that the
25 minor JV1 sent. When was that sent?

1 MR. KING: At the end of the conversation on the
2 first day the 7th, I believe. It could have been very
3 early on the 8th, but it was towards the beginning.

4 THE COURT: Okay, that is on June 8th, you said;
5 right?

6 MR. KING: Yes, Your Honor. That is what
7 prompted the response messing up the sheets and things of
8 that nature. It was that e-mail that he was referring
9 to.

10 THE COURT: I have seen that. That was sent
11 early in the morning on the 8th as was the statement made
12 about the sheets, the shirt, and so forth.

13 MR. KING: It was, Judge. It was JV1 that first
14 provided her phone number and things like that. Again,
15 this argument is on my heels because sex happened. I
16 don't think the evidence by a preponderance demonstrates
17 that his purpose in participating in this conversation
18 was sex. I think that it could have easily gone the
19 other way. People get involved in these types of
20 conversations, not that it is right, but for boredom or
21 whatever reason and they go down this road that they
22 shouldn't be going down and one things leads to another.
23 I just disagree that the evidence demonstrates -- I don't
24 think there is any evidence that demonstrates he started
25 this dialogue with that intention.

1 THE COURT: Let me ask you this question because
2 I want to clear up something else. It goes to something
3 in the presentence report. Let me find it. It is in
4 paragraph 46. It is talking about Mr. Porter. In this
5 case, it is talking about the Defendant's father. The
6 sentence in paragraph 46 of the presentence report that
7 starts with the following, quote, Mr. Porter stated he is
8 aware of the Defendant's charges, but he believes the
9 victim in this case told the Defendant she was 18, when,
10 in fact, she was not. Mr. Porter indicated the Defendant
11 -- well, that is unnecessary. The sentence reads as
12 follows: Mr. Porter is aware of the Defendant's charges,
13 but he believes the victim in this case told the
14 Defendant she was 18 when, in fact, she was not, unquote.
15 What is the defense's position about the age of the
16 minor?

17 MR. KING: That she was 15 at the time of the
18 misconduct.

19 THE COURT: And that he knew that; is that
20 correct?

21 MR. KING: It is correct, Judge. He would not
22 have pled.

23 THE COURT: All right. ; okay.

24 MR. KING: Your Honor, if the Court wants to hear
25 anything further with regard to your first question, I

1 could ask Mr. Porter a couple of questions about that
2 unless the Court is ready to move on.

3 THE COURT: Well, if you want to ask questions --
4 if you ask questions, I am going to place him in oath, if
5 you want to ask him other questions.

6 MR. KING: I would. I would like to ask him more
7 questions.

8 THE COURT: All right, Mr. Porter raise your
9 right hand.

10 (DEFENDANT SWORN.)

11 THE COURT: All right, you may proceed, Mr. King.

12 MR. KING: Thank you, Judge.

13 Q. (BY MR. KING) Jordan, at the time that you started
14 this conversation through this app, did you have any
15 other friends?

16 A. No, I did not.

17 Q. How did you spend your time?

18 A. Well, I mostly was just at home doing chores around
19 the house.

20 Q. What was -- initially, what was your reason engaging
21 in this conversation through this app?

22 A. Just trying to meet new people was my initial thing.

23 Q. And once you started the dialogue with the girl JV1?

24 A. Uh-uh.

25 Q. You saw the screen shot that indicated her age;

1 right?

2 A. Right.

3 Q. And again, when you initiated or rather when
4 conversation began with her, what was your intention at
5 the outset?

6 A. Just making conversation with somebody, just trying
7 to get to know people out there.

8 Q. And obviously other things?

9 A. And that too.

10 Q. At the outset, your intention was not to meet young
11 girls for sex, would that be accurate?

12 A. That would be accurate.

13 MR. KING: Nothing further, Your Honor.

14 THE COURT: All right, anything from the
15 government in this regard, Ms. Sparks? Any
16 cross-examination, Ms. Sparks?

17 MS. SPARKS: Sure, Your Honor.

18 THE COURT: All right.

19 MS. SPARKS: Would you like me to cross from
20 here? Is that appropriate?

21 THE COURT: That's fine.

22 C R O S S E X A M I N A T I O N

23 Q. (BY MS. SPARKS) Mr. Porter, I have just a few
24 questions regardless of what you are saying your initial
25 intent was. It is true within a few conversations that

1 your discussion with the victim in this case went sexual;
2 is that correct?

3 A. Correct.

4 Q. And, in fact, you sent pictures of your own
5 genitals?

6 A. Correct, after I was sent photos from her.

7 Q. So you are saying you would not have sent any
8 pictures of yourself except this minor child sent you
9 pictures; correct?

10 A. Correct.

11 Q. So the conversation where you say it is making me
12 really horny and sent pictures of yourself, you said if
13 you will send me some of you, what is your response to
14 that?

15 A. I --

16 Q. You don't recall that conversation?

17 A. No, I do not.

18 Q. Specifically, let me see here. Let's get the right
19 date.

20 MS. SPARKS: Your Honor, for the Court's
21 clarification, it is June 8, 2014. I think it is the one
22 the judge mentioned earlier, and you are talking about
23 you said cuddle naked and two laughing emoticons. She
24 says, Hmm, close to naked. You say okay. And then you
25 say, As long as we are together, and the victim says, If

1 you want, we can snuggle a bunch. You say, So the pic
2 did nothing for you frowning emoticon. She said, It made
3 me so horny. And you said, Yours would, if I had any,
4 and then we get these pictures, and that is what the
5 judge was eluding to. You don't recall that
6 conversation?

7 A. No, I do not.

8 Q. That was June 8, 2014, the Court according to the
9 chat logs that started on June 7, 2014, so that was the
10 next day?

11 A. Yes.

12 Q. And you also admitted that you sent pictures of
13 vibrators?

14 A. Yes.

15 Q. And as you have already mentioned that you guys
16 actually did, in fact, engage in sexual intercourse?

17 A. Yes.

18 Q. How many occasions?

19 A. I do not recall.

20 Q. And you also sent her a story regarding about how she
21 was going to lose her virginity and what that entailed;
22 do you recall that?

23 A. No.

24 Q. Very explicit conversation where you talked to her
25 about -- let me find the date here -- I believe it is

1 June 11, 2014, and I believe where it says things you
2 have to know, starts with that. It says you are going to
3 want to know all about -- all of this, my princess, how
4 to lose your virginity without pain and goes on to
5 describe in explicit detail.

6 MS. SPARKS: In fact, I don't have exhibit
7 stickers, but may I show this to the Defendant and mark
8 it with my pen as Government's Exhibit No. 1?

9 THE COURT: I think it is included in the Court's
10 exhibit. I believe it is, but I will let you do it out
11 of abundance of caution, that is going to be placed under
12 seal. Any objection to that, Mr. King?

13 MR. KING: No, Your Honor.

14 MS. SPARKS: May I approach the witness?

15 THE COURT: You may.

16 Q. (BY MS. SPARKS) Do you recognize that e-mail that you
17 sent to the victim?

18 A. No.

19 Q. Are you saying you never sent it or you just don't
20 remember?

21 A. I don't even think I sent it to tell you the truth.

22 MR. KING: Your Honor, I am just going to object.
23 I think a lot of these questions are outside the scope of
24 direct. Direct asked specifically about his intent in
25 initiating conversation. The defense has admitted and

1 Mr. Porter has admitted that it obviously turned into a
2 conversation of a sexual nature. This is clearly an
3 attempt just to cause Mr. Porter to remember things.
4 Quite honestly, he has not reviewed in a very long time
5 and again, that is on me. He has been up front that this
6 turned to a sexual nature. We are not denying that;
7 merely that's how it started, the initial -- his thoughts
8 when the conversation was first initiated.

9 That is all he testified to. He has admitted that it
10 turned sexual. I don't understand the relevance of these
11 additional questions.

12 THE COURT: What is the government's response,
13 Ms. Sparks?

14 MS. SPARKS: My response, Your Honor, this all
15 happened in a very short period of time, and so I think
16 it goes to what his intent actually was, and it is not
17 like this started on June 1st, and then on July 15th they
18 decide they are going to start talking about sex. This
19 is all literally within a matter of hours. I think it
20 goes to the specific question the Court was asking and
21 for the specific reason that the Defendant was put under
22 oath, but he stated that he doesn't recall this e-mail
23 anyway, so the Court can take that for what it is worth,
24 and that is all the questions I have anyway.

25 THE COURT: I am going to overrule the

1 objection. I think it goes more to the weight. I agree
2 with the government. This did happen rapidly. It was
3 like they had a conversation, and two weeks later another
4 one, and six weeks later it got to this point. This
5 happened rapidly.

6 MR. KING: May I reply very briefly, Your Honor?

7 THE COURT: You may redirect and whatever
8 questions you ask you in redirect, the government may be
9 inclined to go in and expand on that which it would have
10 a right to do, so keep that in mind.

11 MR. KING: I will, Judge.

12 THE COURT: All right.

13 R E D I R E C T E X A M I N A T I O N

14 Q. (BY MR. KING) Jordan, you understand the questions
15 asked you by the prosecutor, this is based upon evidence
16 that has been gathered and presented we went over a long
17 time ago; right?

18 A. Yes.

19 Q. You are not denying that the evidence contained in
20 there are things that you did and said of a sexual
21 nature, are you?

22 A. No.

23 Q. You admit you did that?

24 A. Yes.

25 Q. Again, my question was at the outset, at the very

1 beginning, did you have the intention of having sex with
2 this girl?

3 A. No, I did not.

4 Q. By the outset, the first few lines of conversation?

5 A. Right; no.

6 Q. You did not?

7 A. No, I did not.

8 MR. KING: Okay, thank you, Your Honor.

9 MS. SPARKS: Nothing further, Your Honor.

10 THE COURT: All right, any final argument, so we
11 can bring this matter to a close?

12 MR. KING: No, Your Honor, I think the defense
13 has made all of its points.

14 MS. SPARKS: I don't have anything further, Your
15 Honor.

16 THE COURT: All right, thank you. The Court has
17 reviewed the presentence report. The Court has also
18 reviewed the investigative packet and summary compared by
19 the agent which has attached to it certain e-mails and
20 text messages that took place between a minor and
21 Mr. Porter. All of that has been admitted into evidence
22 as Court Exhibit No. 1.

23 The Court has also heard from Defense Counsel
24 Mr. King. The Court has heard from Mr. Porter. The
25 Court has heard from Mr. Porter, and Mr. Porter's father,

1 brother, Mr. Matt Porter, and Ms. Cornelius. The Court
2 heard last time from Ms. Boisen, I believe who was from
3 out of town, and the Court allowed her to speak because
4 it was postponing this hearing.

5 The Court has also heard from government's Counsel,
6 Ms. Sparks, and the Court has heard some testimony, and
7 what the Court has to do is determine a sentence that is
8 fair, just, and reasonable under the circumstances.

9 The defense has asked for a sentence of 60 months.
10 The guideline range is 63 to 78 months. The guidelines
11 are not entitled to any presumption of reasonableness.
12 The guidelines have been referred to as a starting point
13 or a point of reference. They have to be considered
14 before the Court comes up with a final sentence.

15 The Court has to also consider the statutory factors
16 it referenced earlier. The Court has to consider in
17 particular those factors under Paragraph (a)(2). Of
18 course, the Court can also consider the factors under
19 paragraph (a)(1) of Section 3553, and that deals with the
20 nature and circumstances of the offense and the history
21 and characteristics of the Defendant.

22 We have a situation here whereby an individual in
23 his late twenties begins having a conversation with a
24 minor who was 15 years old at the time and within a few
25 days of the initial conversation, there is sexual contact

1 and also there is sexual intercourse in addition to the
2 sexual contact on at least three occasions. That is, we
3 know for a fact that sexual intercourse between
4 Mr. Porter and the minor took place on at least three
5 occasions, and there was another instance where there was
6 sexual contact.

7 The Court earlier stated that sexual contact is a
8 broad term because it can include anything from fondling
9 or kissing all the way up to sexual intercourse. Of
10 course, the guidelines had a five-level enhancement if
11 sexual contact were involved.

12 As stated before, I have some concern about how that
13 is applied or the policy statement there because it
14 equates fondling -- well, it does not ascribe any more
15 points for fondling as it does for actual sexual
16 intercourse, and I don't think anybody can argue there is
17 a major difference between fondling and sexual
18 intercourse. But under the guidelines, they are all
19 lumped into the broad category of prohibited sexual
20 contact.

21 As I was saying, we have a 12 or 13-year age
22 difference between Mr. Porter and the victim. As stated
23 before, the evidence shows that we have a young lady who
24 had just broken up with her boyfriend, and as the Court
25 stated earlier, it is not uncommon for someone in that

1 position to be vulnerable. As stated before, sex was not
2 the first thing out of Mr. Porter's mouth, but clearly
3 from the conversation, conversations that the Court heard
4 and based upon the evidence here, the conversations
5 rapidly progressed to those of a sexual nature.

6 Here is something I noticed. It is somewhat subtle,
7 but it is present. I don't hear an absolute
8 acknowledgment. What is said somewhat subtly is that the
9 minor initiated it. Maybe it is not so subtle, initiated
10 the sexual contact. That has been not if not out right
11 advocated, implied on certain occasions. I say that
12 because you have a 12 or 13-year age difference.

13 I understand that Mr. Porter is not at the same level
14 developmentally as other individuals his age, but I do
15 think that notwithstanding is a factor in this case
16 because you are talking about somebody who is 15 and
17 somebody else who is 27 or 28, maybe 28, 29. I cannot
18 ignore that. I cannot ignore that fact.

19 Also, I stated that it is not uncommon for young
20 girls to be impressed by the fact that an older man
21 expressed an interest in her or I should say use the word
22 plural. Let me say it like this. It is not uncommon for
23 a young girl to be impressed that an older male has
24 expressed an interest in her.

25 I think it is also important is that the reason this

1 stopped was because there was intervention by law
2 enforcement and before that, of course, the victim's
3 stepfather alerted law enforcement, and this would have
4 continued for sometime. We do not know how long. I keep
5 coming back to what has been said before, and that is,
6 the person was a minor, and this is not a situation
7 whereby there are two or three years difference.

8 For example, some states have a defense that if the
9 male is no more than two years older than the victim.
10 That is not the case here. I already said there is some
11 12 years perhaps 13 years difference in age. We don't
12 have that situation here.

13 So what the Court has to do is consider those
14 factors under Paragraph (a)(2) of Section 3553, that is,
15 what is a just punishment, what is the seriousness of the
16 offense? There is no question we have a serious offense
17 before us. What is an adequate deterrent?

18 As I stated before, there are reasons why we protect
19 minors. There is a reason why we protect minors because
20 they have not developed to the point that adults have
21 developed. They are impressionable. They are
22 vulnerable, so the law protects them.

23 The guideline sentence range is 63 to 78 months.
24 The Court does not believe that that range provides a
25 reasonable just, and fair sentence under the

1 circumstances of this case. Essentially, we have someone
2 who is preying on a minor. The sentence has to be
3 imposed that would not only deter Mr. Porter from
4 engaging in this type of conduct. I realize the
5 psychologist said the risk is low to moderate, but also,
6 it must put others on notice who might be inclined to
7 engage in this type of conduct. Accordingly, the Court
8 takes it seriously.

9 Individuals have been sentenced to far more than
10 what's in the advisory guideline range under the same
11 statute and have received sentences of 20 or 30 years,
12 and the Fifth Circuit has upheld in those cases, and
13 there has been no sexual intercourse or sexual contact
14 with the victim.

15 It is true in this case we only have a few images,
16 but we do have sexual intercourse. In fact, when the
17 Court read the materials submitted by the defense, there
18 was a case or two cited by the defense when they were
19 talking about sentencing options. The Court reviewed
20 those cases. One of them is the Dumonde case. In that
21 case there was no sexual contact if my memory is correct.
22 When the Court considers the need for just punishment,
23 the seriousness of the offense, deterrence, respect for
24 the law, protection of the public, the Court believes
25 that a reasonable sentence in this case is a sentence of

1 84 months.

2 Accordingly, the Court hereby sentence Mrs. Jordan
3 Michael Porter to a term of 87 months in the Bureau of
4 Prisons.

5 MR. KING: You stated 84 and 87.

6 THE COURT: 84 -- I stand corrected. 84 months.
7 Mentally I was thinking of seven years when I said 87,
8 but it is 84 months, seven years. The sentence that the
9 Court just imposed, the sentence of 84 months should run
10 concurrently with any sentence imposed in the case
11 pending in the 282nd District Court of Dallas County.
12 That charge is the sexual assault of a child, case number
13 F-14203.

14 The Court orders the sentences to run concurrently
15 with any sentence that might be imposed in that case
16 because the case in this Court is related -- the case in
17 this Court in the state case are related. The Court
18 imposes no fine because the Court determines that he does
19 not have the resources or future earning capacity. As
20 required by law, the Court hereby imposes a special
21 assessment of \$100.

22 With respect to supervised release, I believe the
23 term runs from five years to life. The Court hereby
24 imposes a term of ten years supervised release. It is
25 further ordered that upon release from imprisonment,

1 Mr. Porter shall comply with the standard conditions
2 contained in this judgment and comply with the mandatory
3 and special conditions hereafter stated. He shall not
4 commit another federal, state, or local crime. He shall
5 not illegally possess controlled substances. He shall
6 cooperate in the collection of DNA as directed by the
7 probation officer. He shall not possess a firearm,
8 ammunition, destructive device, or any dangerous weapon.
9 He shall report in person to the U.S. Probation Office in
10 the district to which he is released from the custody of
11 the Federal Bureau of Prisons within 72 hours of such
12 release.

13 He shall refrain from any unlawful use of a
14 controlled substance. He must submit to one drug test
15 within 15 days of release from imprisonment and at least
16 two periodic drug tests thereafter as directed by the
17 probation officer. Mr. Porter shall participate in a sex
18 offender treatment services as directed by the probation
19 officer until successfully discharged. These services
20 may include psychological testing to monitor his
21 compliance, treatment progress and risk to the community.
22 He must contribute to the cost of these services
23 rendered, that is, a copayment at the rate of at least
24 \$10 dollars per month.

25 Mr. Porter shall register with state and local law

1 enforcement as directed by the probation officer in each
2 jurisdiction where he resides, is employed, or is a
3 student. He shall provide all information required in
4 accordance with state registration guidelines. Initial
5 registration shall be completed within three business
6 days after release from confinement.

7 He shall provide written verification of
8 registration to the probation officer within three
9 business days following registration. This registration
10 shall be renewed as required by Mr. Porter's assigned
11 tier. He shall no later than three business days after
12 change of name, residence, employment, or student status
13 appear in person in at least one jurisdiction and inform
14 that jurisdiction of all changes and information required
15 in the Sex Offender Registry.

16 Mr. Porter, shall have no contact with persons under
17 the age of 18, including by correspondence, telephone,
18 internet, electronic communication, or through third
19 parties. He shall not have access or loiter near
20 schools, parks, arcades, playgrounds, amusement parks,,
21 or other places where children may frequently congregate.
22 He shall neither seek nor main employment or volunteer
23 work at any location or activity where persons under the
24 age of 18 congregate without prior permission from the
25 probation officer.

1 Mr. Porter shall not date or be friend anyone who
2 has children under the age of 18 without prior permission
3 of the probation officer.

4 He shall neither possess or have under his control
5 any sexually oriented or sexually stimulating materials
6 of adults or children. This includes visual, auditory,
7 telephonic, electric media, e-mail, chat communications,
8 instant messaging, or computer programs. The Defendant
9 shall not patronize any place where such material or
10 entertainment is available. He shall not use any
11 sex-related telephone numbers.

12 Mr. Porter shall have no contact with any victim of
13 this offense or any contact with the victim of this
14 offense, including by correspondence, telephone, or
15 communication through third parties, except under
16 circumstances approved in advance by the probation
17 officer. He shall not enter into the premises, travel
18 past, or loiter near the victim's residence, place of
19 employment, or any place that is frequented by the
20 victim.

21 Mr. Porter shall participate and comply with the
22 compliance computer and internet monitoring program
23 contributing to in an amount not to exceed forty dollars
24 a month consent to the probation officers monitor of
25 computer or computers. The monitoring may include

1 installation of hardware and/or software systems that
2 allow evaluation of computer use.

3 Mr. Porter shall not remove, tamper with, reverse
4 engineer, or circumvent the software in any way. He
5 shall only use authorized computer systems that are
6 compatible with the software and/or hardware used by the
7 Internet Monitoring Program.

8 He shall permit the probation officer to conduct a
9 preliminary computer search prior to the installation of
10 software. At the discretion of the probation officer,
11 the monitoring software may be disabled or removed at any
12 time during the term of supervision.

13 Mr. Porter shall submit to periodic unannounced
14 examinations of his computer or computers, storage media,
15 and/or electronic internet-capable storage devices,
16 performed by the probation officer at reasonable times
17 and in a reasonable manner based upon reasonable
18 suspicion of contraband evidence of a violation of
19 supervision. This may include retrieval and copying
20 and/or removal of such system for the purpose of
21 conducting a more thorough inspection. Mr. Porter shall
22 provide written authorization for release of information
23 from his internet service provider.

24 Mr. Porter shall provide the probation officer with
25 accurate information about his entire computer system.

1 His email shall only be accessed through a preapproved
2 application. Mr. Porter shall not install new hardware,
3 perform upgrades, or effect repairs on his computer
4 system without receiving prior permission from the
5 probation officer.

6 He shall not maintain or create a user account on
7 any social network site, that is, Myspace.com,
8 Facebook.com, Adultfriendfinder.com, et cetera, that
9 allows persons under the age of 18 or allows for the
10 exchange of sexually explicit material, chat
11 conversations, or instant messaging.

12 Mr. Porter shall neither view nor access any web
13 profile of users under the age of 18. He shall not use
14 or possess any gaming consoles including, but not limited
15 to Xbox, Playstation, Nintendo, or devices without prior
16 permission from the probation officer.

17 Mr. Porter shall not use or possess a web cam or any
18 other hardware that allows for the exchange of video or
19 photographs online.

20 Mr. Porter shall not access any service or use any
21 software that allows for direct peer-to-peer contact
22 which may include chat rooms, file sharing, or other
23 similar activity without prior permission of the
24 probation officer.

25 Mr. Porter shall not use or own any device that

1 allows internet access other than authorized by the
2 probation officer. This includes, but not limited to,
3 PDAs, electronic games, and cellular/digital telephones.

4 Mr. Porter shall not access any internet service
5 provider or other online service using someone else's
6 account, name, designation, or alias.

7 Okay, Ms. Sparks, I didn't see a preliminary order
8 of forfeiture. Is there an issue of forfeiture in this
9 case?

10 MS. SPARKS: There is. They actually published
11 the forfeiture and there is a preliminary order of
12 forfeiture. It is document number 44 filed on April 8,
13 2015, and there was notice given that the government
14 actually published this forfeiture action as well and
15 that is document number 51. I have copies if the Court
16 needs them.

17 THE COURT: Okay, she is getting copies. While I
18 am waiting for that, Mr. Porter, let me tell you this.
19 There was a preliminary order of forfeiture. I will get
20 the exact terms, but that preliminary order of forfeiture
21 is now made final as to you. It is also part of your
22 sentence. When I say there is an order of forfeiture, do
23 you know what that means?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What is your understanding, sir?

1 THE DEFENDANT: It says you forfeited my
2 computer, cell phone, and tablet.

3 THE COURT: I understand, but what does forfeit
4 mean?

5 THE DEFENDANT: Give it up.

6 THE COURT: You understand?

7 THE DEFENDANT: Yes, to give up.

8 THE COURT: You give up any title, interest,
9 claim or right to the property. In other words, you no
10 longer have any interest, claim, or title to the property
11 that we are talking about; do you understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Insofar as you are concerned that
14 preliminary order of forfeiture that was entered by the
15 Court is now final as to you and that is part of your
16 sentence; do you understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right, Mr. King, is there a
19 request for a particular facility?

20 MR. KING: Yes, Your Honor, FCI Seagoville.

21 THE COURT: All right, Mr. Porter your attorney
22 has made request that you be allowed to serve your
23 sentence at Seagoville. I will include that in my
24 judgment, but however, keep in mind it is the Bureau of
25 Prisons not the Court that ultimately decides where you

1 serve your sentence. It is my understanding to the
2 extent that the Bureau of Prisons can accommodate the
3 Court's recommendation, they will do so.

4 All right, Mr. Porter, we earlier mentioned the
5 preliminary order of forfeiture. That was entered by the
6 Court on April 8, 2015, and in that preliminary order of
7 forfeiture, talks about certain property being forfeited,
8 that is, iPhone 4, s/n dx4kfwaydpon, IMEI:
9 013266001643842; and a Samsung CE 0168 tablet, model:
10 GT-P51132W, s/n RF2D714186N, which is referred to as the
11 property.

12 As stated before, that means you are giving up any
13 right, claim, or title to the property and that the
14 preliminary order of forfeiture that was entered by the
15 Court on April 8, 2015, is now made final as to you; do
16 you understand that, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right, Mr. Porter, based upon
19 what the Court has done here today and in light of your
20 plea agreement, in particular paragraph 11, page 5, the
21 Court does not believe there is any basis for you to
22 appeal its decision. However, if you disagree, any
23 appeal that you take must be taken within 14 days of my
24 written decision which will issue tomorrow. If you
25 cannot afford the costs of an appeal, you have the right

1 to ask for permission to proceed in forma pauperis.
2 Also, if you cannot afford an attorney for purposes of
3 appeal, you have the right to request an attorney and one
4 will be provided to you.

5 Is there anything further on this case at this time?

6 MS. SPARKS: Your Honor, based upon the
7 Defendant's plea of guilty to the superseding
8 information, we would ask that the indictment filed in
9 this case be dismissed as to -- which are two counts of
10 enticement of a minor as well as attempted enticement of
11 a minor, that those be dismissed again based upon the
12 plea of guilty to the superseding information.

13 THE COURT: Thank you, Ms. Sparks. The
14 government's motion is granted and the indictment
15 originally filed in this case on July 9, 2014, is hereby
16 dismissed as to both counts. Is there anything further
17 on this case?

18 MS. SPARKS: Your Honor, I would just ask that
19 the sentence that has been imposed today based upon the
20 Court's taking into consideration all the 3553 factors
21 regardless of what the guideline sentence would have been
22 in this case?

23 THE COURT: Absolutely. I thought I made that
24 clear because I didn't think the guidelines sentence
25 adequately took those matters into account.

1 MS. SPARKS: Just wanted it clear for the
2 record, Your Honor. Thank you.

3 MR. KING: Nothing from the defense, Judge.

4 THE COURT: All right, there being nothing
5 further, the Court since recess.

6 Mr. Porter, you are remanded to the custody of the
7 United States Marshal.

8 THE COURT SECURITY OFFICER: All rise.

9 *I certify that the foregoing is a correct transcript from*
10 *the record of proceedings in the above-entitled matter.*
11 *I further certify that the transcript fees format comply*
with those prescribed by the court and the Judicial
Conference of the United States.

12 S/Charyse C. Crawford 08-05-2016
13 Signature_____ Date:_____
14 Charyse C. Crawford, CSR, RPR
United States Court Reporter
Northern District of Texas - Dallas Division
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